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From:

Sent: Thursday, December 03, 2009 3:01:18 PM

To:

Cc:

Subject: RE: Coordination on section 6050N issue

This responds to your question about the applicability of section 6050N and whether the payments to artists in the situation described below are royalty payments for which an information return / backup withholding would be required. Based upon the facts presented, we concur that the proceeds received by the artists constitute royalties.

Artist submits music to website.

Website charges artist one time fee for each album submitted by artist.

3rd party downloads music for a fee (set by artist).

Website retains a percentage of this fee and forwards the rest to the artist.

Although not part of your inquiry, I wanted to highlight that the regulation cited, 31.6011(a)-4(b)(5) does not impose backup withholding, but requires the withholding and deposits to be reported on Form 945. Also, the "penalty" for failure to backup withhold is under section 3403, where the payor is ultimately liable for the amount that it should have withheld. The failure to deposit penalty under section 6656 generally is only asserted with respect to amounts that were actually withheld but not deposited. *See generally* section 6302 and the regulations thereunder.

Please contact me with any questions or comments.